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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 371

LOUIS SHUB,

Appellant,

vs.

VIVIAN E. SIMPSON,
Secretary of State of Maryland,

Appellee.

MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE, TO AFFIRM AND BRIEF IN SUPPORT THEREOF

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TO THE HONORABLE, THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Vivian E. Simpson, Secretary of State of Maryland, Appellee in the above entitled cause, respectfully moves this Honorable Court to dismiss the above entitled appeal, or, in the alternative, to affirm the judgment of the Court of Appeals as to the Appellant, Louis Shub, and for reasons in support of said Motion, respectfully represents:

(1) The appeal fails to present any substantial Federal question.

(2) When stripped of the frivolous contentions based on Federal law, the appeal presents only a question of the Construction of a State law under the Constitution of the State of Maryland, an issue not justiciable in this Honorable Court.

The Appellee appends hereto a Brief in support of this Motion.

Respectfully submitted,

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BRIEF IN SUPPORT OF MOTION TO DISMISS APPEAL OR IN THE ALTERNATIVE TO AFFIRM

STATEMENT OF FACTS

This appeal is from a final judgment of the Court of Appeals of Maryland entered October 12, 1950, which affirmed as to the Appellant, Louis Shub, the judgment of the Circuit Court for Anne Arundel County. The opinion of the Court of Appeals is not yet reported officially. The opinion of the Circuit Court for Anne Arundel County will not be officially reported. Both of these opinions are included in the Transcript of Record heretofore filed by the Appellant.

In the Circuit Court for Anne Arundel County, the Appellant filed a Petition seeking the issuance of a Writ of Mandamus to require the Appellee, the Secretary of State

of the State of Maryland, to certify the name of the Appellant on the official ballot to be used at the general election to be held on November 7, 1950, as the gubernatorial candidate of the Progressive Party of Maryland.

The Petition set forth that the Appellant had the requisite constitutional requirements for the office sought, and that he had been duly nominated in accordance with the election laws of the State of Maryland by the Progressive Party of Maryland. The Appellant further alleged that he had properly proffered his certificate of nomination, together with the requisite filing fee to the Appellee, who refused to accept that certificate on the sole ground that it was not accompanied by the affidavit required by Section 15 of Article 85A of the Annotated Code of Maryland, as added by Chapter 86 of the Acts of the General Assembly of Maryland of 1949. Section 15 of Article 85A is a portion of what is commonly known as the Subversive Activities Act of 1949. The Section reads as follows:

> "No person shall become a candidate for election under the provisions of Article 33 of the Annotated Code of Maryland to any public office whatsoever in this State, unless he or she shall file with the certificate of nomination required by the foregoing Article, an affidavit that he or she is not a subversive person as defined in this Article; provided that, in the case of certificates of nomination for President or Vice President of the United States, the affidavit may be made on behalf of such candidates by those persons who file the certificate of nomination for such candidates. No certificate of nomination shall be received for filing by any Board of Supervisors of Elections or by the Secretary of State of Maryland unless accompanied by the affidavit aforesaid, and there shall not be entered upon any ballot or voting machine at any election the name of any person who has failed or refused to make the affidavit aforesaid."

The term "Subversive Person" is defined in the Subversive Activities Act of 1949, as follows:

> "* * * any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the Government of the United States, or of the State of Maryland, or any political sub-division of either of them, by revolution, force, or violence; or who is a member of a subversive organization or a foreign subversive organization."

To this Petition the Appellant filed a Demurrer, the legal effect of which was to admit all allegations of fact. A hearing was held on the Demurrer and the Demurrer was sustained without leave to amend and the Petition for the issuance of a Writ of Mandamus dismissed. Inasmuch as the matter related to the general election to be held on November 7, 1950, an immediate appeal was taken to the Court of Appeals of Maryland where the case was advanced and argument heard thereon on October 12, 1950. By a *per curiam* order entered that same day, the Court of Appeals affirmed the judgment of the Circuit Court for Anne Arundel County in so far as it applied to the Appellant Louis Shub. The Court of Appeals reversed the judgment of the Circuit Court for Anne Arundel County in so far as it applied to the candidate of the Progressive Party for member of the House of Representatives of the United States for the Second Congressional District. The judgment of the Court of Appeals of Maryland as to the Progressive party candidate for Representative is the subject matter of a Petition for Certiorari being filed contemporaneously herewith.